

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

OHIO SECURITY INSURANCE
COMPANY, et al.,

Plaintiff(s),

vs.

KATHY GILLESPIE, et al.,

Defendant(s).

Case No. 2:16-cv-00632-JCM-NJK

ORDER

(Docket No. 15)

Pending before the Court is a stipulation extending time for Defendant Gillespie to respond to the complaint and for a 45-day stay. Docket No. 15. This an insurance dispute in which Plaintiffs, *inter alia*, seek judicial determination of their rights and duties under various insurance policies held by Defendants. Docket No. 1 at 10. As is relevant here, Plaintiffs allege they owe no duty to defend and no duty to indemnify Defendants in an underlying state court action. *Id.* at 10-13.

Courts have inherent power to stay the cases before them as a matter of controlling their own docket and calendar. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). “Where it is proposed that a pending proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant a stay must be weighed.” *Lockyer v. Mirant*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). “In the context of a motion to stay a declaratory relief action brought by an insurer while an underlying action remains pending, courts have outlined several concerns that inform” this analysis:

The first concern is that by bringing the action for declaratory judgment regarding coverage, the insurer effectively attacks its insured and thus gives aid and comfort to the

1 claimant in the underlying suit. The second concern is that the suit addressing insurance
2 coverage forces the insured to fight a two-front war, thereby expending its resources
3 fighting both the insurer and the third-party action, which undercuts one of the primary
4 reasons for purchasing liability insurance. The third concern is the real risk that, if the
declaratory relief action proceeds to judgment before the underlying action is resolved,
the insure[d] could be collaterally estopped to contest issues in the latter by the results
in the former.

5 *Evanston Ins. Co. v. 70 Ltd. P'ship*, 2014 WL 6882415, *2 (D. Nev. Dec. 5, 2014) (quoting *Federal*
6 *Ins. Co. v. Holmes Weddle & Barcott P.C.*, 2014 WL 358419, *2 (W.D. Wash. Jan. 31, 2014).

7 As it pertains to the requested 45-stay, the parties agree that the *Lockyer* factors weigh in favor
8 of staying this action. Docket No. 15 at 3. They further submit that the the underlying action is currently
9 being tried by a jury. *Id.* at 2. Trial commenced on October 25, 2016 and is tentatively expected to
10 conclude by late November 2016. *Id.* The Court finds the relevant considerations favor staying this case
11 for 45 days. Accordingly, the parties' stipulation for extension of the time to respond to complaint and
12 45-day stay is **GRANTED**. This case is **STAYED** until December 27, 2016. No later than January 9,
13 2017, Defendant Gillespie is **ORDERED** to file a response to Plaintiffs' complaint.

14 IT IS SO ORDERED.

15 DATED: November 9, 2016



16
17 NANCY J. KOPPE
United States Magistrate Judge
18
19
20
21
22
23
24
25
26
27
28